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Nos. 585 and 586.

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CHARLES ELMORE

IN THE

Supreme Court of the United States

OCTOBER TERM, 1932.

IN THE MATTER

of

THE AMERICAN BOND & MORTGAGE COMPANY, INCORPORATED, Bankrupt.

ROYAL INDEMNITY COMPANY, a New York corporation, PARKES D. WENDELL, CHARLES T. TRIGG, CHARLES M. WINCHESTER, LLOYD S. CHENEY, WILLIAM LAWRIE, S. J. BENNETT, KATIE DEFRIEZ, BERTHA VERBY, FRANCES C. LOSEE, DR. M. A. LOSEE, J. L. HONE, AGNES E. LARKIN, RALPH W. ELDREDGE, JESSE H. OWENS, DANIEL LARKIN and NEWELL BECKER, Appellants Below,

v.

THE AMERICAN BOND & MORTGAGE COMPANY, INCORPORATED, Respondent, Appellee Below.

ON APPEAL BY WRITS OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS OF THE UNITED STATES FOR THE SEVENTH CIRCUIT.

BRIEF FOR THE APPELLANTS.

SELDEN BACON,
SAUL S. MYERS,
Of Counsel for Appellants.

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Respondent, Appellee Below.

ON APPEAL BY WRITS OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS OF THE UNITED STATES FOR THE SEVENTH CIRCUIT.

BRIEF FOR THE APPELLANTS.

Opinion Below.

The opinion of the District Court (R., 258) has not been reported. The opinion of the Circuit Court of Appeals (R., 283) is reported in 61 Federal, 2d., 875.

Jurisdiction.

The decree to be reviewed was entered November 21, 1932. The writ of certiorari was petitioned for, and was allowed by this Court on February 20, 1933. The jurisdiction of this Court rests upon its allowance of the writ of certiorari. (Judicial Code, Sect. 240A, as amended by Act of February 13, 1925.)

Questions Presented.

The questions presented are as follows:

1. Section 63 of Chapter 56 of the Revised Statutes of Maine (1930) contains the following provision:

> "No corporation shall sell, lease, consolidate or in any manner part with its franchises, or its entire property, or any of its property, corporate rights or privileges essential to the conduct of its corporate business and purposes, otherwise than in the ordinary and usual course of its business, *except with the consent of its stockholders at an annual or special meeting, the call for which shall give notice of the proposed sale, lease or consolidation.*"

Under this provision has the board of directors of a Maine corporation authority to file a petition in voluntary bankruptcy in the name of the corporation without any such consent or authorization from the stockholders?

2. In the case of a voluntary petition of a Maine corporation so authorized by the board of directors only, can creditors of the corporation, who have previously filed an involuntary petition at the domicile of the corporation, be heard to object to the jurisdiction of a different bankruptcy court under the alleged voluntary petition, on the above ground?

3. Whether the principal place of business of a Maine corporation can still be said to remain in the Northern District of Illinois, within the meaning of the Bankruptcy Act,

after; (1), omnibus receivers have been appointed of all its property and assets, including its offices, records and books, in the District Court of the United States for the Northern District of Illinois by final decree upon an omnibus bill and an answer of the corporation consenting to the relief sought; (2), such receivers have qualified and gone into complete possession under such decree; (3), the corporation and its officers and directors have been enjoined by the court appointing the receivers from interfering in any way with its assets and property; (4), the corporation being concededly insolvent at the time of their appointment; and (5), the court in the equity suit having found that it was necessary for the protection and preservation of the rights of its creditors that the assets, property and business be preserved and administered as an entirety through the receivers appointed by it by final decree.

This question arises because the equity receivers had been in full and undisturbed possession of the offices and all the assets in the Northern District of Illinois for the greater part of the six months next preceding the filing of the voluntary petition.

Statement of Facts.

Due presentation of this case calls for a slight amplification of the statement of the facts contained in the petition for certiorari, which statement, however, we follow in general.

As stated in that petition, on May 21, 1931, an omnibus bill in equity, was filed by simple contract creditors, in the District Court of the United States for the Northern District of Illinois, Eastern Division, against the American Bond & Mortgage Company (R. 35). The bill alleged that the American Bond & Mortgage Company was indebted to general creditors in a sum in excess of $8,000,000, part of which was overdue (R. 37). The bill further alleged that if the property and assets of the American Bond & Mortgage Company were sold or disposed of at forced sale, they

might prove insufficient to provide for payment of the indebtedness in full (R., 39). The bill further alleged that unless the Equity Court, in view of the inability of the defendant to meet its maturing obligations, would deal with the property of the defendant as a trust fund, for the payment of its creditors as their several interests should appear, there would be great and irreparable damage to the creditors and to the defendant itself (R., 40).

The bill prayed that the Equity Court "administer" all and singular the property, rights and assets of the defendant, and, in order to preserve and protect the property and assets, and in order that they might be held together *and ultimately sold or otherwise disposed of* in the most advantageous manner, that the court appoint receivers of all the property of the American Bond & Mortgage Company, with full power and authority to take into their possession and hold such property and assets (R., 40, 41). The bill further prayed that the receivers continue to manage and operate as a whole the business then being conducted by the defendant, etc., etc. (R., 41, 42). The bill also prayed for an injunction restraining the American Bond & Mortgage Company, and the owners, superintendents, managers, attorneys, agents and employees of that company from interfering with any of its properties, and "that at such time or times as may be found just and proper *the properties and assets of the defendant may be ordered to be sold, in whole or in part*, in such manner and upon such terms and conditions as this Honorable Court shall deem just and equitable, * * * and that the proceeds of any such sale be distributed among those entitled thereto as this Honorable Court shall adjudicate" (R., 44).

At the same moment that this bill in equity was filed, at 5 P. M. on May 21, 1931 there was filed in the same court a very defective petition in involuntary bankruptcy against the American Bond & Mortgage Co. and an even more insufficient petition for the appointment of a bankruptcy receiver in that proceeding (R., 14, 136). The attorneys who filed these petitions in *that* bankruptcy proceeding con-

ceded that they filed them with full knowledge of the coincident filing of the bill in equity and with the intention of having their bankruptcy proceeding be "cooperative" with the equity receivership (R., 136, 139, 140, 141, 162).

Early in the morning on the 22nd day of May, 1931, the defendant voluntarily appeared in the equity suit, without the issue of any process, expressly admitting all the allegations of the equity bill, and consenting to the relief prayed for therein. The cause was brought on to be heard on that day on Bill and Answer only, and the Court found "that it is necessary for the protection and preservation of the respective rights and equities of the complainants and of all other creditors of the defendant that the assets, property and business of the defendant be preserved and administered as an entirety through a Receiver to be appointed herein" (R., 48). The Court appointed the Chicago Title & Trust Company receiver (R., 48), and later on the same day, appointed Arthur W. Draper, as co-receiver, of all the property of the American Bond & Mortgage Company (R., 52).

No process upon the Bill in Equity was issued to the defendant out of the District Court of the United States for the Northern District of Illinois, Eastern Division, or served upon it, and it appeared and so answered the bill voluntarily (R., 137, 239).

By the order appointing the receivers, they were authorized and empowered to continue the operation of the business of the defendant, with the usual powers of receivers in like cases, until the further order of the Court (R., 49, 52), and the defendant, its officers, superintendents, managers, agents and employees were enjoined from interfering with the transferring, selling or disposing of any property or assets or income of the defendant and from attempting to sell or in any manner dispose of any part of the property or assets of the defendant (R., 51).

The receivers immediately qualified and took possession of *all* the property of the American Bond & Mortgage Com-

pany in the Northern District of Illinois, including its offices and its books, records, files and papers (R., 239).

The petitioners in the Illinois bankruptcy proceeding to which we have just referred acquiesced in this appointment of the equity receivers without objection, voluntarily postponing the hearing of their own application for a bankruptcy receiver which had been set down for the opening of court on May 22, 1931 (R., 4, 6, 7, 8, 26, 139).

On the 25th day of May, 1931, your present petitioners, as creditors of the American Bond & Mortgage Company, having claims amounting to many thousands of dollars in excess of all security held by them, filed a petition for the involuntary bankruptcy of the said American Bond & Mortgage Company in the District Court of the United States for the District of Maine, Southern Division (R., 57, 242). That was the district in which the said American Bond & Mortgage Company was and had been at all times for more than three years domiciled and resident (R., 238). The petition alleged among other acts of bankruptcy, the appointment of the said receivers with the consent and procurement of the said American Bond & Mortgage Company (R., 84).

Conceiving the Chicago bankruptcy proceeding to be merely collusive, some of your present petitioners answered in the Chicago bankruptcy proceeding (R., 139, 140), while one of them filed a motion to dismiss that Chicago bankruptcy petition as defective on its face. The American Bond & Mortgage Company also filed an answer in that Chicago involuntary bankruptcy proceeding of May 21, 1931 (R., 139).

The American Bond & Mortgage Company also filed an answer in the Maine bankruptcy proceeding denying its insolvency (R., 130).

A motion was then made before the District Court in Chicago, pursuant to General Order No. VI in Bankruptcy of this Court, to stay any hearing on the Chicago petition

until determination on the bankruptcy petition filed in Maine, the domicile of the corporation. At the same time the Chicago petitioners in bankruptcy brought on for hearing the motion to dismiss the Chicago petition. The Court heard these motions and took them under advisement and on September 5, 1931, filed two orders, one refusing to dismiss the Chicago involuntary petition, the other staying any action thereon until determination of bankruptcy in Maine (R., 17).

On the same 5th day of September, 1931, and considerably more than three months after the said Equity Receivers had taken full and complete possession of all the assets and property of the said American Bond & Mortgage Company in the Northern District of Illinois (including the offices that had been occupied by it prior to said receivership, its books, files, records and papers), the Board of Directors of the said American Bond & Mortgage Company, on their own sole authority, and without any meeting or resolution of the stockholders of the American Bond & Mortgage Company authorizing such a step, caused to be filed in the same District Court of the United States for the Northern District of Illinois, Eastern Division, a paper purporting to be a voluntary petition in bankruptcy of the American Bond & Mortgage Company. It appeared, however, on the face of that petition that it had been filed by the sole authority of the Board of Directors of the American Bond & Mortgage Company (R., 1-3).

The District Court of the United States for the Northern District of Illinois, Eastern Division, thereupon, without any prior notice to your petitioners, who were the petitioners in the said prior involuntary bankruptcy proceeding in the District of Maine, then pending, forthwith entered an adjudication of bankruptcy against the said American Bond & Mortgage Company on such alleged voluntary petition (R., 3, 17).

At the time of the adjudication in Illinois the Court had before it evidence in the equity suit as well as in the in-

voluntary bankruptcy proceeding, of the prior filing of the petition in bankruptcy in Maine, and its pendency, but no notice was given to the creditors who had filed the petition in Maine (R., 193).

Promptly on hearing of the filing of this voluntary petition and adjudication thereon the Royal Indemnity Company, one of the petitioning creditors in the Maine bankruptcy proceeding, applied to vacate the Chicago adjudication as entered without jurisdiction.

In accordance with the practice of the Illinois district, on the 10th day of September, 1931, the Royal Indemnity Company applied for leave to file a petition to vacate the said adjudication on said pretended voluntary petition and to dismiss that petition as without jurisdiction on various grounds (R., 5). These grounds included (1) the claim that the American Bond & Mortgage Company had not had its principal place of business in the Northern District of Illinois during the greater part of the six months next preceding the filing of the alleged voluntary petition, owing to the appointment of said receivers of all its Illinois property and offices, more than three months prior to the filing of the said involuntary petition (R., 13, 14, 15); (2) that the American Bond & Mortgage Company was organized and created under and by virtue of the laws of the State of Maine, by which laws only the stockholders in meeting assembled had authority to authorize the filing of a voluntary petition in bankruptcy, and no such meeting had been held or resolution passed by the stockholders authorizing such voluntary petition in bankruptcy (R., 15). The Court took the application under advisement, and finally leave was given to the Royal Indemnity Company (R., 7) to file such petition to vacate by order of November 11, 1931, and thereafter, your other petitioners, on leave duly granted, joined in the petition of the Royal Indemnity Company to vacate and set aside the adjudication of the said voluntary petition and to dismiss the same (R., 248, 249).

These petitions were subsequently answered by the American Bond & Mortgage Company, and the appointment of the receivers and their immediate qualifications, and taking possession of all the property in the Northern District of Illinois was expressly admitted (R., 239), as well as the facts that the American Bond & Mortgage Company was a Maine corporation and that the filing of the voluntary petition had not been authorized by any meeting of the stockholders of the American Bond & Mortgage Company, and that no such meeting of its stockholders had been held (R., 238, 239).

The Decisions of the Courts Below.

By permission of the District Court two questions of law involved, as to (a) whether, in view of the receivership, the American Bond & Mortgage Company could be said to have had its principal place of business in the Northern District of Illinois, after the property had been taken possession of by the receivers, and (b) the question whether the Court had the right to proceed to adjudication of a Maine corporation on a voluntary petition filed by no other authority than that of the Board of Directors, were taken up as matters of law. On those questions the District Court ruled:

(a) *as to the effect of the receivership:*

> "An examination of the bill of complaint in the equity receivership case, the answer thereto, and the order appointing the receiver, leads the court to the conclusion that it was the intent of the parties to that proceeding and of the court that the business of American Bond and Mortgage Company was not to be destroyed, but, on the contrary, was to be conserved and preserved. Since this was the purpose of the parties and of the court in that proceeding, the court holds that American Bond and Mortgage Company did not, because of the appointment of an equity receiver on May 22, 1931, cease to do busi-

> ness on that day, and, accordingly, did not, on that date, cease to have a place of business in the Northern District of Illinois."

and, (b) *as to the authority of the directors* of the American Bond & Mortgage Company to file a voluntary petition in bankruptcy without authority from the stockholders in meeting assembled, the District Court held:

> "It may be that the laws of Maine require the authorization of the stockholders in meeting assembled before a voluntary bankruptcy proceeding may be instituted by a Maine corporation, but if the board of directors of a Maine corporation authorize the filing of a voluntary bankruptcy proceeding, and such proceeding is filed in a court which otherwise had jurisdiction, it is exceedingly difficult to see what concern it is of a creditor whether that proceeding has been formally authorized by stockholders. As the court views the situation, a creditor is not at all concerned with this question, and this view has support in the authorities. *In Re Ann Arbor Mach. Corp.*, 274 Fed. 24; *In Re Wagy & Co.* 22 Fed. (2nd) 9. The court holds that this question cannot be raised by a creditor."

From the decrees entered upon that ruling, your petitioners appealed to the Circuit Court of Appeals for the Seventh Circuit, which, on November 21, 1932, filed its opinion (61 F. (2d) 875) affirming the said decision of the District Court saying:

> "The adjudication upon a voluntary petition is *ex parte*, and creditors are given no right to contest it. They are strangers at the bar and have no voice in the hearing, for the bankruptcy law permits no defense *in limine* to a voluntary petition. No defense is permitted by any party unless it be by stockholders contesting the asserted power of the directors."

On the point of the doing of business within the District, the Circuit Court of Appeals concluded by saying:

> "Remembering that it is clear that the intent of the court in the equity proceedings was not to destroy

> the business of the corporation, that that court was powerless to destroy or dissolve the corporation, that that court attempted in no way to interfere with the corporate identity or its powers or franchises except in the specific manner provided in the decree, that all such corporate powers not enjoined remained in the corporation, and that there is shown no change of locality for the transaction of such reserved corporate powers, however great or however little they may have been, it follows that the district court was justified in refusing to find that the principal place of business was not within the district during the greater part of the requisite statutory period."

The above are the rulings which it is now sought to review.

Subsequent to the hearing in Illinois on the application to vacate the adjudication in the voluntary bankruptcy proceeding and dismiss that proceeding, the first meeting of creditors of the bankrupt was called by the Referee in Maine, and the first meeting assembled; but it was immediately adjourned by direction of the District Court without permitting the creditors to elect a trustee or examine the bankrupt's officers, in order to enable the Maine District Court to hear petitions of the bankrupt and of a so-called committee of bondholders for the transfer of the Maine bankruptcy proceeding to the Illinois district (see 58 F. (2d) 379). **These petitions had been set down for hearing only after the entry of the adjudication of bankruptcy in Maine and reference of that proceeding to the Referee in Bankruptcy and the calling of the first meeting of creditors by the Referee in Bankruptcy** (58 F. (2d), 379). In fact the final petitions of the so-called bondholders committee and the bankrupt for such transfer were filed only after the expiration of the time within which creditors could file their proofs of debt in Maine and had actually filed such proofs of debt; and

that so-called committee had itself filed an alleged proof of debt with the Referee in Bankruptcy in Maine.

As one ground of objection to those applications for transfer it was urged that there was no valid pending bankruptcy proceeding in the Illinois district, that the involuntary proceeding there clearly had no existence, in view of the decision of this Court in the case of *Acme Harvester Co.* v. *Beekman Lumber Co.*, 222 U. S., 300; and as to the alleged voluntary proceeding in Chicago the objections now raised were asserted in the Maine Court as well as other reasons why the administration should not be so transferred.

With regard to the sufficiency of the voluntary petition the District Judge in Maine wrote:

> "The same points made here were urged before Judge Barnes, noted in his opinion and decided. While not concluded by his action, I should certainly regard it as very pursuasive and believe that, in the interest of orderly procedure and speedy ending of litigation, I should not decline to follow it unless I concluded that it was clearly wrong. At least, it is a precedent which I feel justified in following, and I do so."
>
> *In re American Bond & Mortgage Co.*, 58 F. (2d) 379.

The Circuit Court of Appeals for the First Circuit allowed an appeal from the order so made by the District Court of Maine directing transfer. That petition was argued in the Circuit Court of Appeals early in January, 1933 and taken under advisement by that Court but has not yet been decided.

Although not directly involved in this appeal, we think it only proper to call attention to the fact that save for the hearing on the motion to dismiss the Illinois involuntary bankruptcy petition of May 21, 1931, no step has ever been taken or been attempted to be taken in *that* proceeding by

the petitioners since the day of its filing, nearly two years ago.

The action of the District Court of the United States for the Northern District of Illinois, Eastern Division, on the equity side in subsequently appointing equity receivers and proceeding to administer the estate in equity seems to bring that dormant Illinois involuntary proceeding directly within the decision of this Court in *Acme Harvester Co.* v. *Beekman Lumber Co.*, 222 U. S. 300, even aside from the feature of its collusive character, a feature discussed with marked ability before this Court by Hon. William G. Mitchell, former Attorney General and Mr. William C. Bullitt, in the case of *United States* v. *Butterworth Corp.*, 269 U. S. 504, at pages 505-6.

It would seem that the recent comments made by this Court on such Equity receiverships in the case of *Michigan* v. *Michigan Trust Co.*, 286 U. S. 334, are peculiarly applicable to this particular equity receivership, which still continues to operate, despite the unquestionable adjudication of bankruptcy in Maine in October, 1931, and the questioned adjudication of September 5th, 1931 in Illinois.

This Court will, perhaps, observe that the answer of the American Bond & Mortgage Company to the petition to vacate contains no suggestion that the Equity Receivers or the District Court of the United States for the Northern Disrict of Illinois, Eastern Division, have ever taken any steps to assert rights of the corporation against its former officers and controlling stockholders (R., 235). Over 200 creditors have expressed their particular desire that administration of the estate be conducted under the control of the District Court of the United States for the District of Maine, Southern Division, where adjudication has long ago been had (R., 9) and the first meeting of creditors held and adjourned by the direction of the court without their electing a trustee. If there was no valid pending petition in Illinois, the administration must be in Maine. Over 400 creditors filed their claims in Maine, and the bankrupt filed its schedules there.

Specification of Errors to Be Urged.

The District Court and the Circuit Court of Appeals erred

1. In holding that creditors of the American Bond & Mortgage Company, although the petitioning creditors in the bankruptcy proceeding already pending in the District Court of the United States for the District of Maine, Southern Division, had no right to contest the adjudication of bankruptcy under the alleged voluntary petition, on the ground that the said petition had not been authorized by the corporation in accordance with the laws of Maine under which it was created and existed.

2. In holding that the principal place of business of the American Bond & Mortgage Company continued to be in Illinois after the appointment of the Equity Receivers and their taking possession of the property and assets of the corporation.

And the Circuit Court of Appeals also erred

3. In affirming the decision of the District Court of the United States for the Northern District of Illinois, Eastern Division, upon the petition to vacate the adjudication of bankruptcy on the voluntary petition.

Summary of Argument.

The law of a state creating a corporation determines what agencies within a corporation have the power to take such steps in its name as filing a petition in bankruptcy. Under the law of Maine that power is specifically reserved to the stockholders in meeting assembled. By the decision of the court of last resort in Maine such provisions of the Maine law can be insisted on by creditors or any other parties interested as well as by stockholders, and that rule of Maine should have been regarded as controlling by the

Illinois courts in dealing with a Maine corporation. Without action by the stockholders the petition was not the voluntary petition of the corporation.

When the omnibus receivers were appointed of all its property in Illinois and took over its assets and offices there, the American Bond & Mortgage Company could no longer be said to have its principal place of business in the Northern District of Illinois. It was out of business there. The receivers had been in such possession for considerably more than three months next prior to the filing of the voluntary petition and there was consequently no jurisdiction of that voluntary petition so filed in Illinois.

The Bankruptcy Act in providing where petitions can be filed confines the jurisdiction outside of the domicile of a corporation to the district where the bankrupt has had *its* principal place of business during the greater part of six months next preceding the filing of the petition. When the receivers went into possession and the bankrupt ceased to do business in Illinois, it ceased to have *its* principal place of business there.

POINTS AND AUTHORITIES.

POINT I.

The board of directors had no power to authorize a voluntary petition in bankruptcy by the American Bond and Mortgage Company, and a petition filed solely by their authority is not the voluntary petition of the corporation.

There was for a time an apparent sharp divergence between the decisions of different Courts of Bankruptcy as to the power of the board of directors of a corporation to authorize the filing of a voluntary petition in bankruptcy. It was soon observed, however, that the decisions in favor of such powers were as to corporations organized under the laws of States which did not expressly confine such powers to the stockholders. Where the corporate laws of a State provided that such power could be exercised only by the stockholders, it was uniformly held that action by the board of directors conferred no jurisdiction.

Some half dozen or more States have, or have had, such statutes, and, where the statutes have been so construed, the rulings have been uniform that only the stockholders could authorize voluntary petitions in bankruptcy.

In re *Standard Shipyard Co.*, 262 Fed., 522 (D. C. Me.).

In re *Quartz Gold Mining Company*, 157 Fed. 243 (D. C. Ore.).

Van Emon v. *Veal*, 158 Fed. 1022 (C. C. A. 9th Cir.).

In re *Burbank Co.*, 168 Fed. 719 (D. C. N. H.).

In re *Crystal Ice Co.*, 283 Fed. 1007 (D. C. Mont.).

In re *Security, etc. Assn.*, 52 F. (2d) 961 (D. C. Nev.).

In re *Bates Machine Co.*, 91 Fed. 625 (D. C. Mass.).

It is now settled law that the question whether the Board of Directors of a corporation has the power to authorize the filing of a voluntary petition in bankruptcy is to be determined exclusively by the law of the State organizing the corporation. It determines by its own laws where the various corporate powers of its creature reside and what persons shall exercise them.

Home Powder Co. v. *Geis,* 204 Fed. 568.
In re *Russell Wheel Co.,* 222 Fed. 569, 573.
In re *Vassar Foundry Co.,* 293 Fed. 248.
In re *Standard Shipyard Co.,* 262 Fed. 522, 526.
Loveland on Bankruptcy (4th Ed.), Sec. 136.
Black on Bankruptcy (4th Ed.) p. 310.

Under the laws of Maine, even before the present prohibitory statute, the Board of Directors of a corporation had no power to transfer its fundamental assets, but only to carry on its business.

Rollins v. *Clay,* 33 Me. 132.

And this decision was rendered in favor of one who was not a stockholder, establishing as the law of Maine corporations that the right to raise this objection was not confined to stockholders.

The Maine corporation law was largely revised by statute in 1891 and by that Act it was specifically provided:

> "No corporation shall sell, lease, consolidate or in any manner part with its franchises, or its entire property, or any of its property, corporate rights or privileges essential to the conduct of its corporate business and purposes, otherwise than in the ordinary and usual course of its business, except with the consent of its stockholders at an annual or special meeting, the call for which shall give notice of the proposed sale, lease or consolidation."

Rev. Stat. Me. Cap. 56, Sec. 63.
(For full text of section, see Appendix A.)

And this Maine statute was construed years ago by the District Court of the United States for the District of Maine as depriving the Directors of any power of filing a voluntary petition in bankruptcy on behalf of the corporation.

> In re *Standard Shipyard Company,* 262 Fed. 522, 526.

That such is the law of Maine has not been disputed either by the District Court or by the Circuit Court of Appeals in this case.

The question is the simple one whether, pursuant to Section 4 of the Bankruptcy Act, the American Bond & Mortgage Company has, in fact and in law, filed "a petition to be adjudged a voluntary bankrupt." If unauthorized persons have filed such a petition in its name and ostensibly on its behalf, then such petition was not the act and petition of the corporation itself; the corporation has never declared its willingness and purpose to be "a voluntary bankrupt"; the conditions of Section 4 of the Bankruptcy Act have not been fulfilled; and the court was without jurisdiction.

POINT II.

The petitioning creditors in the Maine bankruptcy proceeding were entitled to raise the objection.

Since the Maine law is clear that such power did not reside in the Board of Directors, it would seem that, totally irrespective of the capacity of the petitioners, the court of its own motion should have vacated the adjudication and dismissed the voluntary petition as unauthorized and as conferring no jurisdiction. But the courts below in this case have avoided this result, by holding that such action by the Board was not void, but only voidable, and that the invalidity could be taken advantage of solely by stockholders who alone could avoid the effect of the act of the Board.

The courts below have in this case held that even though the objection that the petition was not the act of the corporation ran to the jurisdiction of the Bankruptcy Court, these creditors (petitioners in the earlier petition in the Maine district) could not be heard to object, and the Court would not itself take the objection.

The law of Maine, as established by its Court of last resort is to the contrary.

Rollins v. *Clay,* 33 Me. 132.

And the United States Courts in Illinois were bound to accept the Maine Court's construction of the Maine law of corporations.

In the very recent case of *Commerce Trust Company* v. *Chandler,* 295 Fed. 241, the Circuit Court of Appeals for the First Circuit held that, under the provisions of the corresponding Massachusetts Act (see Appendix B) the objection could be raised not only by the stockholders but by anyone else in interest.

In discussing this Massachusetts statute, the First Circuit Court of Appeals said:

"In the statute before us the Legislature was dealing with vital matters relating to the conduct and the life of corporations. We think it intended to prohibit a corporation, by its directors, or by less than two-thirds of its stock, at a lawful meeting, to change its corporate name, or the nature of its business, or the classes of its capital stock and their voting power, or to make any other lawful amendment or alteration in its agreement of association or articles of organization, or to sell, lease, or exchange all its property and assets, including its good will and its corporate franchise. We think the Legislature intended to place these fundamental changes in a corporation beyond the powers of directors and beyond the powers of stockholders representing less than two-thirds of its stock. The Legislature did not undertake to limit the protective powers of the statute, nor to say for whose protection it was made. We think it was clearly made for the benefit of stockholders; but we think it was not for their exclusive benefit. We think the Legislature intended to say that any person whose property rights were invaded by a noncompliance with the terms of this statute could assert the invalidity of any act attempted to be done without such compliance."

Commerce Trust Company v. *Chandler*, 295 Fed. 241, 243-244.

Under similar New York statutes forbidding the execution of corporate mortgages without the consent of the stockholders, it is held by the Second Circuit Court of Appeals, as well as by the New York Court of Appeals, that the objection can be raised by anyone.

In re *Post & Davis Co.*, 219 Fed. 171.
In re *James, Inc.*, 30 F. (2d) 555.
Leffert v. *Jackman*, 227 N. Y. 310.
Maryland Company v. *Schaefer Co.*, 141 Misc. 629, aff'd. without opinion 232 A. D. 766 and 256 N. Y. 663.

On the other hand, the Circuit Court of Appeals for the Seventh Circuit had previously held that, under the Illinois Railroad Law (for the details of which see Appendix C), the statutory requirement of consent of two-thirds of the stockholders, is for the protection of the stockholders only, and the stockholders alone may use it, following a decision of the Supreme Court of Illinois.

> *U. S. Mortgage & Trust Co.* v. *Chicago & A. R. Co.*, 40 F. (2d) 386, 389.

In the Eighth Circuit Court of Appeals, there were dicta to like effect concerning the effect of a Colorado statute.

> *Westerlund* v. *Black Bear Mining Co.*, 203 Fed. 599.

But as the suit there under consideration was brought by stockholders, the matter was merely dictum, and curiously enough, was, in part, predicated on District Court decisions in the Second Circuit which have long since been overruled.

As Maine is within the First Circuit, some especial weight would seem to attach to the decision of the First Circuit Court of Appeals on the similar Massachusetts statute, and it is perhaps not unworthy of note that the Judge writing the opinion in the *Chandler* case in the First Circuit Court of Appeals (295 Fed. 241), from which we have quoted, is the same Judge who, sitting in the District Court of the United States for the District of Maine, had previously made the similar ruling as to the force of the Maine statute in the *Standard Shipyard* case, 262 Fed. 522.

The decision of the Supreme Court of Maine, in *Rollins* v. *Clay*, 33 Me. 132, that even prior to the statute the objection as to the limitation of the powers of directors could be taken by any person in interest, would seem to declare the policy of that State on the point, and, if so construed, that decision is controlling as to the construction to be placed on the Maine statute, though disregarded by the courts below.

POINT III.

Upon the appointment and qualification of the equity receivers, and their taking possession of all of the property of the American Bond and Mortgage Company in the Northern District of Illinois, including its offices, books and papers thereon, the corporation being itself enjoined from interfering with that property in any way, that corporation ceased to have its principal place of business in the Northern District of Illinois.

In the following cases, receiverships of this character were squarely held to have put an end to foreign corporations having their principal place of business in the district of the receivership.

In re Perry Aldrich Co., 165 Fed. 249 (D. C. Mass.).

In re McNally Co., 208 Fed. 291 (D. C. S. D. N. Y.).

It had seemed to us that the Circuit Court of Appeals for the Seventh Circuit many years ago, in the case of *In re Plotke*, 104 Fed. 964, had strongly intimated that the conduct of business by an assignee in insolvency did not suffice to continue the principal place of business of the bankrupt as the place where the assignee resided when the bankrupt had removed from the State after the assignment. The circuit Court of Appeals for the Seventh Circuit in the opinion under appeal in referring to that case as making no announcement in conflict with its decision, would seem to have failed to notice that feature of its earlier decision.

The industry of counsel has so far succeeded in disclosing but a single other case which is contrary to the ruling in the *Perry Aldrich* case and the *McNally Company* case. The case we refer to is *In re American & British Manufacturing Corporation* (300 Fed. 839), decided, in the District

Court of the United States for the District of Connecticut, subsequent to the decisions in the *Perry Aldrich* case and the *McNally Company* case, which decisions were not even mentioned by the court in Connecticut.

In that Connecticut case, the question *considered* by the Court seems to have been rather one as to the character of the business than as to the locality of conducting it during the greater part of the six months next preceding the filing of the petition in bankruptcy. Both court and counsel in that case seem to have *assumed* that business done by the equity receiver was business done by the corporation. The decision of the case, however, was in conflict with the direct rulings made in the *Aldrich* and *McNally* cases.

The cases cited by Judge Thomas in the *American & British* case to support his decision did not deal with the point here involved, but were decisions solely on the point of whether the character of business of the corporation remained unchanged by the receivership. On the subject of the applicability of the principal place of business clause to the conduct of business by omnibus receivers, we have found no direct decisions except those mentioned.

Section 2(1) of the Bankruptcy Act does not refer to the principal place of *the business*, but to the place where "the persons bankrupt have *their*" principal place of business. In other words, the Bankruptcy Act refers to the place where *the bankrupt* is doing business, not to a place where a business it once owned is being done by someone else. (*In re McNally Co.*, 208 Fed. 291; *In re Perry Aldrich Co.*, 165 Fed. 249.)

The Bankruptcy Act does not create out of the business a sort of separate entity or existence, irrespective of the identity of the persons conducting the same. On the contrary, the thing emphasized by the statute is the identity of the person conducting the business. It is the place where the bankrupt himself has had *his* principal place of business during the required period.

When, therefore, the business passes out of his hands and it is taken over and conducted by others, he ceases to be in that business in that place, even though the business itself as such may go on. The relevant consideration is that the bankrupt himself has ceased to conduct the business, and that, therefore, the locality has ceased to be the place where the bankrupt has "*his* principal place of business." Consequently, when the courts below undertook to decide that the continuance of the business in the same locality is sufficient to give jurisdiction, they were improperly personifying the business and misreading the Bankruptcy Act.

The court below based its ruling in part also upon the assertion that "all such corporate powers not enjoined remained in the corporation, and that there is shown no change of locality for the transaction of such reserved corporate powers, however great or however little they may have been." But this clearly is not the meaning of the word "business" in Section 2 (1) of the Bankruptcy Act. That word is obviously used in its common and usual meaning and refers to active and personal engagement in a commercial pursuit. The mere exercise of naked corporate powers, separate and apart from active management of the commercial enterprise which the corporation had in hand, is not the conduct of business within the meaning of that section.

We urge that certain decisions of this court clearly establish the true rule as to the nature and effect of such a receivership, a rule differing from that adopted by the court below.

As to its nature, the decisions of this Court in *Price* v. *United States*, 269 U. S. 492, 502, and *United States* v. *Butterworth*, 269 U. S. 504, seem controlling.

As to the effect of such a receivership, we believe the decision in *United States* v. *Whitridge*, 231 U. S. 144, establishes that during this receivership *the corporation* no

longer was doing business in the Northern District of Illinois.

The decision of the Sixth Circuit Court of Appeals in *Ohio* v. *Ferris,* 229 Fed. 892, seems to be to like effect.

The receivership in this case covered the greater part of the six months next preceding the filing of the voluntary petition. After the appointment of those receivers and their taking over possession of all the assets of the American Bond & Mortgage Company in the Northern District of Illinois, including its offices, its files and its records, it would seem that that corporation was "out of business" in the Northern District of Illinois.

POINT IV.

The decrees appealed from should be reversed and the adjudication of bankruptcy by the District Court for the Northern District of Illinois should be vacated and the voluntary petition dismissed.

Respectfully submitted,

SELDEN BACON,
SAUL S. MYERS,
Of Counsel for Appellants.

Appendix A.

REV. STAT. ME. CAP. 56, SEC. 63.

Corporation not to sell franchises or entire property without consent of stockholders, R. S., c. 51, s. 60., 1929, c. 242. No corporation shall sell, lease, consolidate or in any manner part with its franchises, or its entire property, or any of its property, corporate rights or privileges essential to the conduct of its corporate business and purposes, otherwise than in the ordinary and usual course of its business, except with the consent of its stockholders at an annual or special meeting, the call for which shall give notice of the proposed sale, lease or consolidation. All such sales, leases and consolidations shall be subject to the provisions of this and the eleven following sections, and to the prior lien of stockholders as therein defined. Except as to franchises, this and the eleven following sections shall not be held to apply to mortgages or corporate property.

To effect a consolidation under the provisions of the foregoing paragraph and subject to the provisions of this and the eleven following sections, any two or more corporations organized or to be organized under the provisions of this chapter or existing under the laws of this state, or any corporation or corporations organized or to be organized under the provisions of this chapter or existing under the laws of this state and any corporation or corporations organized under the laws of any other state, may consolidate into a single corporation which may be either one of said corporations, provided the same be a corporation originally organized under the laws of this state, or a new corporation under the laws of this state to be formed by means of such consolidation, by entering into an agreement duly authorized by a majority of the directors of the respective corporations and signed by the duly authorized officers, and under the respective seals of said corporations, prescribing the terms and conditions of the consolidation, the mode of carrying the same into effect, whether or not

the consolidated corporation shall be one of the constituent corporations or a new corporation created by such consolidation, and stating in such altered form as the circumstances of the case may require such other facts as are necessary to be set out in the certificate of organization of corporations organized under this chapter and as are pertinent in the case of a consolidation, the manner of converting the capital stock of each of such consolidating corporations into the stock or obligations of such consolidated corporation together with such other provisions and details as shall be deemed necessary to perfect the consolidation. Said agreement shall be acknowledged by one of the executing officers of each of the consolidating corporations before an officer authorized by the laws of this state to take acknowledgments of deeds, to be the respective act, deed and agreement of each of said corporations.

Subject to provisions of by-laws with reference to closing stock-books prior to stockholders' meetings said consolidation agreement shall be submitted to the stockholders of record of each corporation at a meeting thereof called separately for the purpose of taking the same into consideration, and at said meeting a vote in person or by proxy shall be taken for the adoption or rejection of said agreement, and if the votes of stockholders of each corporation representing a majority of the voting power, on a proposal to consolidate said corporation with another, shall be for the adoption of said agreement, then that fact shall be certified on said agreement by the clerk or secretary of each corporation and the agreement so signed, acknowledged, adopted and certified, after it has been examined by the attorney-general, and been by him certified to be properly drawn and signed and to be conformable to the constitution and laws of this state, shall be recorded in the registry of deeds in the county where the said consolidated corporation is located, and within sixty days after the day of the meeting at which said consolidation agreement is adopted by the stockholders, a copy thereof certified by such register shall be filed in the office of the secretary of

state, who shall enter the date of filing thereon, and on the original agreement, certified as aforesaid, to be kept by the consolidated corporation, and shall record said copy. From the time of filing the copy of such agreement in the office of the secretary of state, said agreement shall be taken and deemed to be the agreement and act of consolidation of the said corporations and said original consolidation agreement of a certified copy thereof shall be evidence of the existence of such consolidated corporation and of the observance and performance of all acts and conditions necessary to have been observed and performed precedent to such consolidation. When said agreement is so signed, acknowledged, adopted, recorded and filed, the separate existence of all of the constituent corporations or all of such constituent corporations except the one into which such constituent corporations shall have been consolidated, shall cease, and the constituent corporations, whether consolidated into a new corporation or merged into one of such constituent corporations, as the case may be, shall become the consolidated corporation by the name provided in said agreement, possessing all the rights, privileges, powers, franchises and immunities as well of a public as of a private nature, and being subject to all the liabilites, restrictions and duties of each of such corporations so consolidated and all and singular the rights, privileges, powers, franchises and immunities of each of said corporations, and all property, real, personal and mixed, and all debts due to any of said constituent corporations on whatever account, and all other things in action of or belonging to each of said corporations, shall be vested in the consolidated corporation; and all property, rights, privileges, powers, franchises and immunities, and all and every other interest shall be thereafter as effectually the property of the consolidated corporation as they were of the several and respective constituent corporations, and the title to any real estate, whether by deed or otherwise, under the laws of this state, vested in any of such constituent corporations, shall not revert or be in any way im-

paired by reason thereof; provided, that all rights of creditors and all liens upon the property of any of said constituent corporations shall be preserved unimpaired, limited to the property affected by such liens at the time of the consolidation, and all debts, liabilities and duties of the respective constituent corporations shall thenceforth attach to said consolidated corporation and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it.

The notice herein provided for shall be given to all stockholders of record of all of the consolidating corporations, whether or not entitled to vote, but subject to any by-law provisions with reference to closing stockbooks prior to stockholders' meetings. If the holder of record of any share not entitled to vote in any constituent corporation selling, leasing, consolidating, or otherwise disposing of its property as aforesaid, shall at or prior to the taking of the vote, dissent therefrom in writing and shall at such time, or within one month from the date of such vote, file his written dissent therefrom with the president, clerk or treasurer of such corporation, then such non-voting shares of such stockholder shall be subject to and be entitled to all of the rights granted by the eleven following sections in like manner as if they had been voting shares.

If the location of the consolidated corporation is not the same as that of the constituent corporations, then the clerk of the consolidated corporation shall within sixty days after such consolidation has became effective file a certificate of the consolidation, setting forth the names and locations of the consolidated and constituent corporations, in the registry of deeds of each county, other than that of the consolidated corporation, where the constituent corporations may be located.

The provisions of this section with reference to consolidation shall neither restrict nor enlarge the provisons of secton one of chapter sixty-eight and section forty-four of chapter sixty-two as now amended.

Appendix B.

MASS. BUS. CORPORATION LAW 1903.
CHAP. 437, SEC. 40.

Section 40. Every corporation may, at a meeting duly called for the purpose, by the vote of a majority of all its stock, or, if two or more classes of stock have been issued, of a majority of each class outstanding and entitled to vote, authorize an increase or a reduction of its capital stock and determine the terms and manner of the disposition of such increased stock, may authorize a change of the location of its principal office or place of business in this commonwealth or a change of the par value of the shares of its capital stock, or may authorize proceedings for its dissolution under the provisions of section fifty-one.

It may, at a meeting duly called for the purpose, by the vote of two-thirds of all its stock, or, if two or more classes of stock have been issued, of two-thirds of each class of stock outstanding and entitled to vote, or by a larger vote if the agreement of association so requires, change its corporate name, the nature of its business, the classes of its capital stock subsequently to be issued and their voting power, or make any other lawful amendment or alteration in its agreement of association or articles of organization, or sell, lease or exchange all its property and assets, including its good will and its corporate franchise, upon such terms and conditions as it deems expedient.

Appendix C.

REVISED STATUTES ILLINOIS.
CH. 114, SEC. 19.

"SEC. 19. Every corporation formed under this act shall, in addition to the powers hereinbefore conferred, have power:"

* * * * * * *

"*Tenth*—From time to time, to borrow such sums of money as may be necessary for completing, finishing, improving or operating any such railway, and to issue and dispose of its bonds for any amount so borrowed, and to mortgage its corporate property and franchises to secure the payment of any debt contracted by such corporation for the purposes aforesaid; but the concurrence of the holders of two-thirds in amount of the stock of such corporation, to be expressed in the manner and under all the conditions provided in the fifteenth section of this Act, shall be necessary to the validity of any such mortgage; and the order or resolution for such mortgage shall be recorded as provided in the second section of this Act; and the directors of such corporation shall be empowered, in pursuance to any such order or resolution, to confer on any holder of any bond for money so borrowed, as aforesaid, the right to convert the principal due or owing thereon into stock of such corporation, at any time not exceeding ten years after the date of such bond, under such regulations as may be provided in the by-laws of such corporation."

Provisions of the 15th Section referred to, which 15th Section dealt with the matter of increase of capital stock reads as follows:

"Such increase shall be sanctioned by a vote in person or by proxy, of two-thirds in amount of all the stock of such corporation, at a meeting of such stockholders called by the directors of the corporation for such purpose, by giving notice in writing to each stockholder, to be served person-

ally or by depositing the same in a post office, directed to the post office address of each of said stockholders severally, with necessary postage for the transmittal of the same, prepaid, at least sixty days prior to the day appointed for such meeting, and by advertising the same in some newspaper published in each county through or into which the said road shall run or be intended to run (if any newspaper shall be published therein), at least sixty days prior to the day appointed for such meeting. Such notice shall state the time and place of meeting, the object thereof, and the amount to which it is proposed to increase such capital stock; and at such meeting the corporate stock of such corporation may be so increased, by a vote of two-thirds in amount of the corporate stock of such corporation to an amount not exceeding the amount mentioned in the notices so given. Should the directors of any such corporation desire at any time to call a special meeting of the stockholders, for any other necessary purpose, the same may be done in the manner in this section provided, and if such meeting be attended by the owners of two-thirds in amount of the stock, in person or by proxy, any other necessary business of such corporation may be then transacted, except the altering, amending or adding to the by-laws of such corporation: Provided, such business shall have been specified in the notices given.

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Supreme Court of the United States

OCTOBER TERM, 1932.

No. 585

ROYAL INDEMNITY COMPANY, PARKES D. WENDELL, CHARLES T. TRIGG, et al.,

Petitioners,

vs.

AMERICAN BOND & MORTGAGE COMPANY.

No. 586

ROYAL INDEMNITY COMPANY, PARKES D. WENDELL, CHARLES T. TRIGG, et al.,

Petitioners,

vs.

AMERICAN BOND & MORTGAGE COMPANY.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

PETITION FOR INJUNCTION, AND NOTICE OF MOTION.

SELDEN BACON,
SAUL S. MYERS,
Attorneys and Counsel for Appellants.

SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1932

Nos. 585 and 586

ROYAL INDEMNITY COMPANY, PARKES D. WENDELL, CHARLES T. TRIGG, CHARLES M. WINCHESTER, LLOYD S. CHENEY, WILLIAM LAWRIE, S. J. BENNETT, KATIE DEFRIEZ, BERTHA VERBY, FRANCES C. LOSEE, DR. M. A. LOSEE, J. L. HONE, AGNES E. LARKIN, RALPH W. ELDREDGE, JESSE H. OWENS, DANIEL LARKIN and NEWELL BECKER,

Petitioners,

against

AMERICAN BOND & MORTGAGE COMPANY.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Sirs:

PLEASE TAKE NOTICE that upon the annexed petition of the Royal Indemnity Company and of Parkes D. Wendell, Charles T. Trigg, Charles M. Winchester, Lloyd S. Cheney, William Lawrie, S. J. Bennett, Katie DeFriez, Bertha Verby, Frances C. Losee, Dr. M. A. Losee, J. L. Hone, Agnes E. Larkin, Ralph W. Eldredge, Jesse H. Owens, Daniel Larkin and Newell Becker, and the printed record on file in the office of the Clerk of the Supreme Court of the United States in the above entitled causes, we shall on behalf of the said petitioners move the above-named Court at a Term thereof appointed to be held on March 13, 1933 at the Capitol at Washington at the opening of the

court on the said day or as soon thereafter as counsel can be heard, for an injunction to be issued by the above-named Court restraining the Chicago Title & Trust Company and Arthur W. Draper, Esq., as Receivers in Equity of the assets of the above-named American Bond & Mortgage Company and any of their successors, and their and each of their attorneys, agents and servants from proceeding with their application Exhibit A of the said annexed petition and from in any way interfering with any of the property or estate of the bankrupt, pending the decision of this Court upon the matters brought before this Court under the above mentioned writs of certiorari, except only to conserve such property, and during the same time from seeking the appointment of any Receiver in bankruptcy of such property in the Involuntary Proceeding in bankruptcy so begun against said American Bond & Mortgage Company in the District Court of the United States for the Northern District of Illinois in May, 1931; and for such other and further proper relief in the premises as may be just and agreeable to equity.

Dated, March 8, 1933.

Yours respectfully,

SELDEN BACON,
SAUL S. MYERS,
Attorneys and Counsel for
Petitioners.

To:
CHICAGO TITLE & TRUST COMPANY
and ARTHUR W. DRAPER, ESQ.,
as Receivers in Equity of American Bond
& Mortgage Company,
69 West Washington Street,
Chicago, Ill.

DEFREES, BUCKINGHAM, JONES & HOFFMAN, ESQS.,
105 South La Salle Street,
Chicago, Illinois.

KIRKLAND, FLEMING, GREEN & MARTIN, ESQS.,
33 North La Salle Street,
Chicago, Illinois,
Attorneys for such Receivers.

A. L. SCHAPIRO, ESQ.,
First National Bank Building,
Chicago, Illinois,

WILLIAM E. LEAHY, ESQ.,
Investment Building,
Washington, D. C.,
Attorneys and Counsel for Respondent in the above entitled appeals.

WHITE & HAWXHURST, ESQS.,
Attorneys for the Petitioning Creditors in the Involuntary Bankruptcy Proceeding in Illinois,
1 North La Salle Street,
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H. E. AMBLER, ESQ.,
Attorney for the Defendant, American Bond & Mortgage Company, in the Equity Action in Illinois,
127 North Dearborn Street,
Chicago, Illinois.

TOWNLEY, WILD, CAMPBELL & CLARK, ESQS.,
Attorneys for the Plaintiffs in the Equity Action in Illinois,
105 South La Salle Street,
Chicago, Illinois.

SUPREME COURT OF THE UNITED STATES,

October Term, 1932

Nos. 585 and 586

ROYAL INDEMNITY COMPANY, PARKES D. WENDELL, CHARLES T. TRIGG, CHARLES M. WINCHESTER, LLOYD S. CHENEY, WILLIAM LAWRIE, S. J. BENNETT, KATIE DEFRIEZ, BERTHA VERBY, FRANCES C. LOSEE, DR. M. A. LOSEE, J. L. HONE, AGNES E. LARKIN, RALPH W. ELDREDGE, JESSE H. OWENS, DANIEL LARKIN and NEWELL BECKER,

Petitioners,

against

AMERICAN BOND & MORTGAGE COMPANY.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

TO THE HONORABLE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The petition of Royal Indemnity Company and of Parkes D. Wendell, Charles T. Trigg, Charles M. Winchester, Lloyd S. Cheney, William Lawrie, S. J. Bennett, Katie DeFriez, Bertha Verby, Frances C. Losee, Dr. M. A. Losee, J. L. Hone, Agnes E. Larkin, Ralph W. Eldredge, Jesse H. Owens, Daniel Larkin and Newell Becker, respectfully shows to this Honorable Court:

1. That they are the petitioners for the writs of certiorari in the above entitled causes now pending in this court, in which this Court on the 20th day of February,

1933, granted the petitions for the writs of certiorari, and the printed record therein has been filed in the office of the Clerk of this Court and the causes have been set down for argument in this Court, and, as your petitioners are advised by the Clerk of this Court, will probably be reached and heard about the 20th or 21st of the present month of March.

2. That the question primarily presented on such writs of certiorari is as to the validity of an alleged adjudication of bankruptcy entered in the District Court of the United States for the Northern District of Illinois, Eastern Division upon an alleged voluntary petition of the above-named bankrupt filed in that Court on the 5th day of September, 1931, which adjudication has been sustained by the Circuit Court of Appeals for the Seventh Circuit, to review which action of that Court the present writs of certiorari have been allowed.

3. That an adjudication of bankruptcy of the above-named bankrupt of unquestioned validity was entered in the District Court of the United States for the District of Maine, the domicile and State of origin of the bankrupt, on the 15th day of October, 1931 on a petition in involuntary bankruptcy filed in that Court against the said bankrupt on the 25th day of May, 1931, by your petitioners as creditors of the bankrupt.

4. That in the District Court of the United States for the District of Maine there was entered an order on the 6th day of May, 1932 transferring the administration of the bankrupt's estate to the District Court of the United States for the Northern District of Illinois. That the Circuit Court of Appeals for the First Circuit allowed an appeal from that order which appeal was argued and submitted to that Court on the 3rd day of January, 1933 and is now there under advisement.

5. That at 5 P. M. on the 21st day of May, 1931 there was filed in the District Court of the United States for

the Northern District of Illinois an omnibus bill in equity by simple contract creditors of the said American Bond & Mortgage Company, against that Company, asking the appointment of Equity Receivers of that Company, to preserve and administer the assets.

6. And that, at the same moment there was filed in that Court a pretended petition in involuntary bankruptcy against said American Bond & Mortgage Company by certain other alleged creditors of the bankrupt. That answers to that petition were promptly filed both by the bankrupt and by other creditors of the bankrupt and the same have never been brought to trial. With that petition there was also filed on that day a petition for the appointment of a receiver in bankruptcy which failed on its face to show any grounds for the appointment of a Receiver in bankruptcy.

7. That on the 22nd day of May, 1931, the bankrupt voluntarily appeared in said equity suit and consented to the relief sought by the bill, and final decree appointing such Receivers in the equity suit was forthwith entered on that 22nd day of May, 1931; and the Receivers immediately qualified and on that day took possession of all the assets of the bankrupt in the Northern District of Illinois.

8. That the Illinois bankruptcy petitioners acquiesced in the appointment of such equity receivers, and their counsel subsequently admitted in open court that their petition in bankruptcy was filed with full knowledge of the contemporaneous filing of the said bill in equity and was intended to be "cooperative" therewith. And that no further steps in advance have ever been taken on the said involuntary petition in bankruptcy so filed in Chicago on May 21, 1931.

9. That the said Equity Court has gone on, despite the said adjudication of bankruptcy in Maine on October 15, 1931 and despite the said alleged adjudication in the voluntary proceeding in Illinois on September 5, 1931, administering the estate.

10. That no first meeting of creditors has ever been called under the said voluntary Illinois adjudication.

11. That the first meeting of creditors under the Maine adjudication was called, and was held on the 30th day of March, 1932, but by direction of that Court was adjourned, subject to recall by the Court, without electing a trustee in bankruptcy, and still stands so adjourned.

12. That, as your petitioners are advised and believe, upon the entry of a valid adjudication of bankruptcy the power of the equity court to administer the estate of the bankrupt ceased and passed to the bankruptcy court.

13. That as your petitioners are advised and believe, on the facts shown in the record on said writs of certiorari, the involuntary proceeding so begun on May 21, 1931, was long since abandoned and rejected, under the decision of this Court in the case of *Acme Harvester Co.* v. *Beekman Lumber Co.*, 222 U. S. 300, and is no longer pending.

14. That if the alleged voluntary adjudication in Illinois be void, as is contended by the appellants in these appeals to this Court, the entire property of the bankrupt, on the entry of the adjudication in Maine on October 15, 1931, passed into the custody, jurisdiction and control of the District Court of the United States for the District of Maine.

15. That if the alleged voluntary adjudication in the Illinois District Court be valid, then by the said writs of certiorari now pending in this Court, all said property and estate of the bankrupt have by said writs of certiorari been brought into the control and jurisdiction of this Court.

16. That in neither event, as your petitioners are advised, has the Equity Court in the Northern District of Illinois any right to take any action over the estate of the bankrupt, except to turn it over to the proper bankruptcy court. Nor has the District Court of the United States for the Northern District of Illinois any jurisdiction, as your petitioners are advised and believe, to proceed to the ap-

pointment of a Receiver in bankruptcy in said abandoned and rejected involuntary proceeding in the Illinois District Court, in derogation of the adjudication in the Maine District.

17. Nevertheless, the Equity Receivers, so appointed have *since the allowance of the said writs of certiorari* by this Court, caused to be presented to the said District Court of the United States for the Northern District of Illinois, sitting in the said equity suit, a petition and notice of which a copy is hereto annexed marked *Exhibit A* and hereby made a part of this petition, and have caused copies of such petition and annexed notice to be sent to the attorneys for your petitioners in this pending proceeding and have presented said petition to the said Equity Court, and are seeking action thereon by said District Court of the United States for the Northern District of Illinois.

18. That the President Monroe Building referred to in the said annexed Exhibit A is situate in the City of New York, in the State of New York, and the interests therein mentioned and described in said Exhibit A and as to which action is thereby sought, are part of the estate of the bankrupt involved in the said adjudication in Maine, and in the said alleged adjudication in Illinois, and in the said appeals to this Court under said writs of certiorari. Said building is owned by the President Monroe Corporation which is a corporation organized under the laws of New York.

19. That the said Equity Receivers are threatening to proceed with their said application, though the same has been temporarily adjourned.

20. Your petitioners hereby refer to and make a part of this petition the printed record on appeal in the above entitled appeals to this Court under the said Writs of Certiorari so granted by this Court.

The various proceedings referred to in this petition and in the said petition Exhibit A hereof are the same proceed-

ings referred to in the said printed record, where they are more fully set forth.

WHEREFORE your petitioners pray that this Court enjoin and restrain the said Receivers in Equity, their successors if any and their agents and attorneys and each of them, from proceeding with their said application and from in any way interfering with any of the property or estate of the bankrupt which has so been brought into the jurisdiction of this Court by the said writs of certiorari so issued by this Court, pending the decision of this Court upon the said writs of certiorari, except only to conserve such property, and during the same time from seeking the appointment of any Receiver in bankruptcy of such property or any thereof in the said involuntary proceeding so begun against said American Bond & Mortgage Company in the said District Court of the United States for the Northern District of Illinois in May, 1931; and that this Honorable Court grant your petitioners any other and further proper relief in the premises as may be just and agreeable to equity.

And your petitioners will ever pray, etc.

Dated, March 8, 1933.

SELDEN BACON,
SAUL S. MYERS,
Attorneys and Counsel for
Petitioners.

VERIFICATION.

STATE OF NEW YORK, }
County of New York, } ss.:

SAUL S. MYERS, being duly sworn on oath deposes and says that he is the duly authorized agent and attorney in this behalf of the petitioners herein, that he has, on behalf of the said petitioners, executed the foregoing petition; that he knows the contents thereof and that the same are true. Deponent further says that the reason that this verification is not made by the petitioners is that deponent has been acting as the attorney in this matter for the said petitioners since May 23, 1931 and is personally familiar with all of the facts herein set forth.

SAUL S. MYERS

Sworn to before me this 8th }
day of March, 1933. }
ROSE M. SILICH

ROSE M. SILICH
Notary Public
N. Y. County Clk's No. 238
N. Y. Register's No. 4S967
Commission expires March 30, 1934

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION.

IN EQUITY NO. 10539.

T. H. CLARKE, *et al.*,

Plaintiffs,

vs.

AMERICAN BOND & MORTGAGE COMPANY, a Corporation,

Defendant.

Notice.

To: TOWNLEY, WILD, CAMPBELL & CLARK, 105 SOUTH LASALLE STREET, H. E. AMBLER, 127 NORTH DEARBORN STREET, MOSES, KENNEDY, STEIN & BACHRACH, 231 SOUTH LASALLE STREET, WHITE & HAWXHURST, 1 NORTH LASALLE STREET.

PLEASE TAKE NOTICE that on Saturday, March 4, 1933, at the opening of court in the forenoon or as soon thereafter as counsel can be heard, we shall appear before the Honorable James H. Wilkerson, sitting as one of the Judges of said court, in the room usually occupied by him as a court room in the Federal Building, in the City of Chicago, Illinois, and in his absence before the Judge who may at that time be sitting in his stead, and present the petition of Chicago Title & Trust Company, a corporation, and Arthur W. Draper, Receivers for said American Bond and Mortgage Company, praying for the entry of an order in con-

formity with the prayer of said petition; a copy of which petition is hereto attached and herewith served upon you; at which time and place you may appear if you so desire.

DEFREES, BUCKINGHAM, JONES & HOFFMAN,
KIRKLAND, FLEMING, GREEN & MARTIN,
Solicitors for Receivers.

RECEIVED a copy of the above notice together with copy of the petition therein referred to this day of March A. D. 1933.

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IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION.

IN EQUITY NO. 10539.

T. H. CLARKE, *et al.*,

Plaintiffs,

vs.

AMERICAN BOND & MORTGAGE COMPANY, a Corporation,

Defendant.

Petition of Receivers for an Order Authorizing Them to Enter Into an Agreement Re the Reorganization of the President Monroe Building at New York.

TO THE HONORABLE JAMES H. WILKERSON, ONE OF THE JUDGES OF SAID COURT:

Now comes CHICAGO TITLE AND TRUST COMPANY, a corporation, and ARTHUR W. DRAPER, Co-Receivers for said defendant corporation, and respectfully represent unto the Court as follows:

1. That pursuant to the orders entered herein on May 22, 1931, appointing your petitioners as receivers of the property, assets and effects of the said American Bond and Mortgage Company and authorizing and empowering your petitioners to continue the operation of the business of said corporation, your petitioners did thereupon take possession of all of its property, assets and effects and have since been and are now in complete control and management of said company.

2. That one Charles E. Hughes, Jr., was on May 27, 1931, appointed ancillary receiver of said defendant corporation by the United States District Court for the Southern District of New York; that he is duly qualified and is now acting as such ancillary receiver.

3. That subsequent to their appointment as such receivers, the defendant corporation filed in this court its voluntary petition in bankruptcy and to-wit: on September 5, 1931, was adjudicated a bankrupt. Thereafter certain creditors filed a motion to dismiss said bankruptcy on the grounds that this District Court did not have jurisdiction of the defendant corporation. This motion was denied and an order was entered by the District Court that it had jurisdiction to administer the estate. On an appeal to the Unied States Circuit Court of Appeals for the Seventh Circuit the holding of the District Court was upheld. From the ruling of the United States Circuit Court of Appeals the same creditors have petitioned the United States Supreme Court for writ of certiorari and on February 20, 1933, the said petition for certiorari was allowed and the matter now awaits the filing of briefs by the respective parties. That in addition to being adjudicated a bankrupt in this District, the defendant corporation was to-wit: on September 15, 1931, adjudicated a bankrupt by the United States District Court for the District of Maine, Southern Division, and said Court also entered an order transferring the proceedings and administration of said bankrupt estate to the United States District Court for the Northern District of Illinois, Eastern Division. An appeal has been taken from said order of transfer to the United States Circuit Court of Appeals for the First Circuit, which Court now has the appeal under advisement. In neither of the aforesaid proceedings has a receiver been appointed for the defendant corporation nor has a trustee been elected and the affairs of said defendant corporation are still being administered by your petitioners as receivers and your petitioners as receivers for the defendant corporation in

this proceeding are still in possession of all of its property, assets and effects and are still in complete control and management of said company.

That in addition to the foregoing bankruptcy proceedings, an involuntary petition in bankruptcy was filed against the American Bond and Mortgage Company in this Court on the 21st day of May A. D. 1931, and numbered 47250, and on said date there was also filed in this court in said bankruptcy proceedings, by Bellamy-Neff Co., one of the petitioners in bankruptcy, a petition for the appointment of a bankruptcy receiver for said defendant corporation. That to-wit: On the 29th day of May A. D. 1931, your receivers, together with the defendant corporation, filed an answer in the bankruptcy proceedings last above mentioned, denying insolvency and the alleged acts of bankruptcy as in said petition set forth and demanded a trial by jury; that on September 5, 1931, said answer was withdrawn; that also on September 5, 1931, an order was entered in said bankruptcy proceedings staying all further proceedings until the further order of the court. That on June 14, 1932, the petitioning creditors in said proceeding filed a motion therein for an order vacating the order staying the proceedings and for the entry of an order of adjudication; that said motion was continued from time to time and is still pending; that no further orders have been entered in said proceedings nor has a receiver been appointed or a trustee elected for the defendant corporation in said proceedings.

4. That among the property, assets and effects of said company which your receivers have in their possession are 250 shares of the common stock of the President Monroe Corporation (being all of the outstanding stock of said corporation) which is a corporation owning the premises known as the President Monroe Building and located at 270 Lafayette Street, in New York City; that said stock represents an investment of the defendant corporation of $119,743.08 in said building corporation; that attached

hereto marked Exhibit "A" is a complete analysis of the investment of the American Bond and Mortgage Company in said premises.

5. That also among the assets coming into the possession of your receivers were the following bonds and interest coupons, being part of a first mortgage bond issue secured by the aforesaid President Monroe Building premises:

Bonds due December 1, 1928		
Purchased before maturity.....	1500	
" on maturity date	5000	
" after " "	6000	$ 12,500
Bonds due December 1, 1929		
Purchased before maturity.....	500	
" on maturity date	3500	
" after " "	8500	12,500
Extended and subordinated bonds		1,000
Interest coupons due June 1, 1929		26,940.51
Total interest including investment of $119,-743.08 above referred to		$172,683.69

That the original first mortgage bond issue was $1,-075,000.00 in principal amount of which amount $70,000.00 has been paid and cancelled and $22,500.00 in principal amount extended and subordinated, leaving $982,500.00 first mortgage bonds unsubordinated outstanding and unpaid and not expressly subordinated. Principal payments maturing December 1, 1928, June 11, 1929, December 1, 1931, and semi-annually thereafter totaling $66,000.00 are past due and unpaid. Of this amount the 1928 and 1929 maturities in the sum of $25,000.00 are held by American Bond and Mortgage Company, which also holds $26,940.51 of coupons which matured June 1, 1929 and which are also

unpaid. Sufficient funds have not been deposited to pay the interest coupons which matured December 1, 1932. Real estate taxes for the second half of the year 1929 and for the years 1930 and 1931 and 1932 aggregating approximately $88,200.00 exclusive of interest and penalties are in arrears. The property is not earning sufficient to meet its taxes, principal and interest requirements. On account of these defaults the Committee for the Protection of Holders of First Mortgage Bonds sold through American Bond and Mortgage Company has called these bonds for deposit in order to protect the interests of the first mortgage bondholders and foreclosure proceedings are about to be instituted by the first mortgage trustee in accordance with the terms of said first mortgage; that attached hereto marked Exhibit "B" is a complete statement of the outstanding bonds of this issue.

6. That the attorneys for the Committee formed for the protection of bonds sold through the American Bond and Mortgage Company have submitted to your receivers the provisions of a plan of reorganization for the above premises. Under the plan as submitted and negotiations connected therewith, your receivers as owners of all of the aforesaid stock will be called upon to consent to the said corporation executing an assignment of rents to the Irving Trust Company and Charles C. Moore, corporate and individual trustees respectively under the aforesaid mortgage, said assignment to be effective from December 1, 1932, and to further consent to said President Monroe Corporation transferring all of its present assets consisting of over $15,000.00 in cash, accounts receivable in the approximate amount of $13,500.00, unexpired insurance premiums, the equity in the property, together with existing leases and together with approximately $7,211.73 of cash deposited to secure rents due under certain of said leases, all to a corporation to be formed to acquire the title to the property under sale under said foreclosure proceedings, or otherwise. The plan further provides that your

receivers turn over all the bonds and coupons which they hold as aforesaid, reserving, however, all their rights under suits which have heretofore been instituted against one Joseph G. Siegel on account of his guarantee of payment of certain bonds and coupons of the aforesaid issue. The plan further provides for the establishment of a voting trust with three voting trustees, under the terms of which the capital stock of the new corporation shall be held by such voting trustees and the President Monroe Corporation will be permitted to name one of said trustees as part consideration for the transfer of the property above referred to.

The plan further provides that the capital stock of said President Monroe Corporation shall be deposited in escrow with proxies authorizing the carrying out of the plan, which contemplates that in order to save trustees and/or receivers fees and those of their attorneys pending the carrying out of the plan, that the management and the operation of the property shall be carried on through said President Monroe Corporation subject to the supervision of the Bondholders Committee as aforesaid.

The plan and negotiations in connection therewith further include recognition of the holders of the extended and subordinated bonds and coupons by issuance to them of voting trust certificates on the basis of two shares for each $300 of the face principal amount of such extended and subordinated bond and/or coupons.

The plan further contemplates that said new corporation shall borrow a sufficient amount, approximately $175,000.00 to cover foreclosure expenses, reorganization costs, committees' fees, taxes, insurance, distribution to non-depositing bondholders and a small amount for the new corporation; that said sum so borrowed will be a first mortgage upon the said premises and as such will be prior to any of the rights or interest your receivers will acquire under said proposed plan of reorganization; that Committees' fees for the reorganization will be a sum equal to 5% of the face principal amount of bonds outstanding at the time of the call for deposit.

The plan and the negotiations in connection therewith contemplate that $2,000.00 face principal amount of said first mortgage bonds held by your receivers which were purchased prior to maturity shall be placed on a parity with other unmatured bonds and that $23,000.00 face principal amount of said first mortgage bonds held by your receivers as aforesaid, which were purchased on or after maturity together with the interest coupons aggregating $26,940.51 above referred to due June 1, 1929 which were purchased by American Bond and Mortgage Company on or after maturity shall be subordinated as to 1/3 of the face amount thereof and that the remaining 2/3 of the face amount thereof shall be placed on a parity with other bonds and coupons of this issue.

If this plan is carried out said President Monroe Corporation will be required to execute and deliver said assignment of rents as of from and after December 1, 1932 and will make a contribution of approximately $29,700.00 made up as above set forth and will transfer the equity in said premises to the new corporation, together with said approximate amount of $7,211.73 of cash deposited by tenants to secure rents under certain of said leases, which will be transferred and assigned to said new corporation, together with unexpired insurance policies and accounts receivable and in consideration thereof will receive voting trust certificates for 12½% of the capital stock of said new corporation.

If said plan is carried out your receivers will be required to consent to the above mentioned transactions by President Monroe Corporation and to deposit said capital stock of President Monroe Corporation in escrow with proxies authorizing the carrying out of said plan and to deposit with the depositories of said Bondholders Committee said bonds and coupons owned by American Bond and Mortgage Company on a parity with and/or subordinated to the other first mortgage bonds of said issue under the terms above set forth and under the terms and subject to the condition of said plan and if said plan is consum-

mated your receivers will receive voting trust certificates therefor in the proportions above set forth, on the same basis as those received by other depositing bond and coupon holders, which it is understood will be voting trust certificates for one share of the capital stock of such new corporation for each $100 of face principal amount of said bonds and/or coupons which have not been subordinated or deposited under said plan and voting trust certificates for two shares for each $300 of subordinated bonds and coupons deposited under said plan; that anyone withdrawing their bonds or coupons after first depositing same with the depositories of said Bondholders Committee, shall be required to pay an amount equal to 5% of the face principal amount of said bonds and coupons withdrawn, to said Committee.

Your receivers are informed that under the laws and procedure of the courts in the State of New York foreclosure bars redemption by any person properly made a party to the foreclosure proceedings and your receivers understand that since the President Monroe Corporation does not have sufficient funds and under present conditions of depression, reduced rentals and vacancies cannot obtain sufficient funds to make up the defaults above described, and since, under forced sale the property probably will not bring in enough to pay the first mortgage indebtedness, that the investment of President Monroe Corporation in said property and the investment of American Bond and Mortgage Company in said property through its ownership of the capital stock of said President Monroe Corporation and its investment in the bonds and coupons of said bond issue will be seriously jeopardized and lost as to most thereof in case said plan is not entered into and said foreclosure proceedings are carried out and sale made thereunder.

That your receivers believe that in order to prevent unnecessary waste to this estate and to protect the creditors of the American Bond and Mortgage Company, it is to the best interests of this estate that they be permitted to authorize President Monroe Corporation to enter into said

plan and to execute such instruments and agreements that may be necessary to carry out the terms thereof and that your receivers be permitted and authorized to execute and deliver such instruments and agreements and to make such deposits as may be necessary to carry out the terms of said plan, or that an order be entered in the involuntary bankruptcy proceedings pending before this court and numbered 47250, vacating the order staying all further proceedings, and that a further order be entered in said bankruptcy proceedings appointing a receiver or receivers for said bankrupt corporation, to take immediate possession of all of the property, assets and effects of said corporation.

WHEREFORE your receivers pray that an order may be entered herein authorizing and directing them to authorize said President Monroe Corporation to execute and deliver said assignment of rents and to execute and deliver such instruments and contracts and to do such other acts as may be necessary to carry out said plan and that your receivers be authorized and directed under said order to make such deposits of bonds and coupons and to execute and deliver such instruments and contracts and to do such other acts as may be necessary to carry out said plan, subject to the conditions above set forth, or that an order be entered in the involuntary bankruptcy proceedings pending against the defendant corporation in this court and numbered 47250, vacating the order staying said proceedings, and that a further order be entered in said bankruptcy proceedings appointing a receiver or receivers for said bankrupt corporation, to take immediate possession of all of the property, assets and effects of said corporation and to conserve its assets, and for such other and further relief in the premises as to the court shall seem meet.

CHICAGO TITLE AND TRUST COMPANY, a Corporation, and ARTHUR W. DRAPER, Receivers,

By CHARLES CARROLL
Their Duly Authorized Agent
in this Behalf.

STATE OF ILLINOIS }
County of Cook } ss.:

CHARLES CARROLL, being first duly sworn, on oath deposes and says that he is the duly authorized agent in this behalf of the Chicago Title and Trust Company, a corporation, and Arthur W. Draper, receivers in the above entitled cause; that he has, on behalf of said receivers, executed the foregoing petition; that he knows the contents thereof and that the same are true.

CHARLES CARROLL

Subscribed and sworn to before me this * day of February A. D. 1933.

*

.....
Notary Public.

* These places have been left blank on the original filed in Court.

EXHIBIT A.

PRESIDENT MONROE.

Analysis of the investment of American Bond and Mortgage Company in the Building.

Real Estate Equity Account—		*Debit*	*Credit*
12-31-27	Advance made to Stoddard & Mark	$ 6,336.42	
12-31-27	Collateral Note of A. Corcoran dated 5-11-27 with collateral of 400 shares of 63 Prince Street Corporation	10,000.00	
12-31-27	Open Account	14,229.42	
12-31-27	Foreclosure sale value of bonds and coupons due 6-1-27 totaling $54,937.50	7,508.13	
1-26-28	Credit for coupons due 6-1-27 received from Trustee		47.76
5-28-28	Credit for coupons due 6-1-28 received from Trustee		2,071.49
9-26-28	Credit for coupons received from Trustee		31.00
12-26-28	Credit for coupons received from Trustee		6.15
8-16-30	Coupons due 6-1-28 ..	3,451.71	
	Coupons due 12-1-27..	34,287.50	
	Open account of J. Siegel	47,429.37	
4-20-31	Credit balance transferred from Client's account		1,343.07
	Totals	$123,242.55	3,499.47
	Balance	$119,743.08	

Brought forward—Balance			$119,743.08
Bonds—		*Debit*	*Credit*
Bonds due December 1, 1928			
Purchased before maturity.		1500.—	
" on maturity date		5000.—	
" after " "		6000.—	12,500.00
Bonds due December 1, 1929			
Purchased before maturity.		500.—	
" on maturity date		3500.—	
" after " "		8500.—	12,500.00
Extended and Subordinated Bonds			1,000.00
Coupons—			
Interest Coupons due June 1, 1929			26,940.51
Total Interest...			$172,683.59

EXHIBIT B.

PRESIDENT MONROE.

Description of Outstanding Bonds.

Original Issue		$1,075,000.—
Bonds used in foreclosure when A B & M Co. took title now carried in equity account	20,000.—	
Bonds paid and cancelled	50,000.—	
Bonds extended to June 1, 1935	22,500.—	95,500.—
Outstanding matured and unmatured bonds		$ 982,500.—
Not Extended		
First Mortgage Bonds unmatured in the hands of the public	930,000.—	
First Mortgage Bonds matured in the hands of the public	27,500.—	
First Mortgage Bonds matured owned by A B & M Co.	25,000.—	
	$982,500	
Extended Bonds owned by A B & M Co.	1,000.—	
Extended Bonds in the hands of public	21,500.—	
	22,500.—	